

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<u>In the Matter of</u>	)	
	)	
Implementation of Section 621(a)(1) of the	)	MB Docket No. 05-311
Cable Communications Policy Act of 1984 as	)	
amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

**REPLY COMMENTS  
OF THE CITY OF TAMPA, FLORIDA**

**I. SUMMARY**

The City of Tampa, Florida ("City") respectfully submits the following reply comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM"<sup>1</sup>) and to the Errata filed by Verizon in this docket on March 6, 2006 ("Errata"). The Errata clarified that the City of Tampa has not demanded Verizon provide \$13.5 million dollars as a condition of granting a cable television franchise. The City appreciates Verizon's candor and files these reply comments to further clarify the previously misstated facts regarding the Tampa-Verizon negotiations. In summary, the City makes the following points:

1. The Commission should pay specific attention to the Errata filed on March 6, 2006. The Errata acknowledges that allegations made with respect to the City's public, educational and governmental access channel ("PEG") and Institutional Network ("I-Net") demands were unfounded and misleading. As Verizon now

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<sup>1</sup> *In the Matter of implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television and Consumer Competition Act of 1992, MB Docket No. 05-311, Notice of Proposed Rulemaking (released November 18, 2005).*

concedes, at no time did the City make a \$13.5 million dollar demand for PEG and I-Net support as originally alleged.<sup>2</sup> The Errata clarifies that the amount of support requested by the City was equivalent to the support by the existing incumbent cable operator—an amount less than half that alleged.

2. The City is committed to completing cable television franchise discussions with our incumbent local exchange carrier and any other qualified entity.
3. The Commission should add our voice to those of the numerous local government entities which prove: (1) the invaluable role local governments play in franchising and (2) the lack of any congressionally delegated authority over franchising to the Commission.<sup>3</sup>

## **II. BACKGROUND ON THE CITY OF TAMPA**

The City's history extends back to the Spanish explorer Ponce de Leon, who arrived in the Tampa Bay area in 1513. In 1824, only two months after the arrival of the first American settlers, the United States government sent four companies of the U.S. Army to establish Fort Brooke and to protect the strategic harbor at Tampa Bay. The City was initially incorporated in December, 1855.

Today Tampa is a full service, home-rule city on a land area of 116 square miles with a population of 333,040.<sup>4</sup> The City government is comprised of an elected Mayor as Chief Executive and seven council members as the City's legislative body.<sup>5</sup>

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<sup>2</sup> See Letter of Alan F Ciamporzero to David Smith, Tampa's City Attorney dated March 8, 2006 attached hereto.

<sup>3</sup> See Comments of the National Association of Telecommunications Officers and Advisors, *et. al* filed February 13, 2006.

<sup>4</sup> See TampaGov - Official Site of the City of Tampa, Florida, <http://www.tampagov.net>

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The City has a Cable Communications Department which negotiated and oversees the cable television franchise that the City granted to Bright House. Pursuant to that franchise, Bright House currently serves 71,975 households providing 78 active analog channels or 180 active digital video channels and 47 active digital audio channels.

### **III. THE WALL STREET JOURNAL ARTICLE**

The City is engaged in ongoing negotiations with Verizon for a cable television franchise. Verizon appears to have been the source of inaccurate information that the City's franchise negotiating position in regard to the City's requests for PEG and I-Net support included a demand that Verizon provide \$13.5 million dollars as a condition of granting a cable television franchise. This inaccurate information first appeared in an article published in the WALL STREET JOURNAL,<sup>6</sup> and has been often repeated. In fact it has risen to the status of an "urban legend" at the Commission and in other fora.<sup>7</sup>

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<sup>5</sup> The Tampa City Council is a legislative branch of City Government and operates in accordance with the provisions of the 1974 Revised Charter of the City of Tampa. The City Council is responsible for enacting ordinances and resolutions that the Mayor of Tampa administers as chief executive officer. Seven Council members are elected by the voters within the City Limits of Tampa to serve for a term of four years. Council members for Districts #1, #2, and #3 are elected at-large (meaning city-wide) and those from Districts #4 through #7 are elected in individual districts. The term of office for the current City Council members will expire on March 31, 2007.

<sup>6</sup> See Dionne Searcey, *As Verizon Enters Cable Business, It Faces Local Static*, " WALL STREET JOURNAL, October 28, 2005 at A1.

<sup>7</sup> While Verizon has corrected the facts in the Commission's record, the WALL STREET JOURNAL article continues to be a source of erroneous claims by others in their filings with the Commission and elsewhere. See e.g. Comments of the Fiber to the Home Council at 37, Comments of AT&T at 26; and Comments of Bell South at 38.

**IV. AN ACCURATE RECORD WILL REFLECT THAT THE CITY WANTS CHOICE FOR ITS CONSUMERS AND HAS NOT MADE UNREASONABLE DEMANDS.**

**A. Verizon's Claims**

On February 13, 2006<sup>5</sup> Verizon filed Comments in this proceeding which included inaccurate information regarding the City's position regarding traditional franchise terms.<sup>8</sup>

Verizon characterized the City's request for PEG and I-Net support as follows:

"[O]ne franchising authority in Florida demanded that Verizon match the incumbent cable operator's cumulative PEG payments, which would exceed \$6 million over the 15-year term of Verizon's proposed franchise. When Verizon rejected this demand, the LFA doubled its request, asking for a fee in excess of \$13 million for both PEG and the construction of a communications network. The LFA claimed this was based on a back-of-the-envelope "needs assessment."<sup>9</sup>

Verizon further asserted that when Verizon rejected the demand, the local franchising authority ("LFA") went back to its original \$6 million dollar demand, and that negotiations with this LFA are still ongoing."<sup>10</sup>

**B. Setting the Record Straight**

David L. Smith, Tampa's City Attorney, contacted Alan Ciamporcero, President of Verizon's Southeast Region to inquire as to Verizon's mischaracterization of the City's negotiating position, and to request that a clarification be filed by the company with the Commission.

During their phone conversation, later memorialized in a series of letters which are attached hereto, Mr. Ciamporcero acknowledged that Verizon's filings were inaccurate and stated that the erroneous assertion had likely been based on old, inaccurate information that

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<sup>8</sup> Comments of Verizon filed February 13, 2006 at 30.

<sup>9</sup> *Id.* at p. 65. *See also* Declaration of Marilyn O'Connell at paragraph 30)

<sup>10</sup> *Id.*

should have been purged from Verizon's system and Mr. Ciamporcero committed to file a clarification with the Commission.<sup>11</sup>

On March 6, 2006, Verizon filed an Errata with the Commission. The Errata stated:

Page 65 of the Comments, replace the second sentence of the first full paragraph (paragraph 4 of section II.D.) with the following:

When Verizon rejected this demand and asked for an explanation, the LFA provided a summary "needs assessment" in excess of \$13 million for both PEG support and equipment for an expansion of its I-Net.

Attachment A, Declaration of Marilyn O'Connell, replace paragraph 30 with the following:

30. For example, one franchising authority in Florida demanded that Verizon match the incumbent cable operator's cumulative PEG payments, which would exceed \$6 million over the 15-year term of Verizon's proposed franchise. When Verizon rejected this demand and inquired as to its basis, the LFA stated it was Verizon's portion of a \$13 million "needs assessment" for both PEG and equipment for an expansion of its I-Net.

The LFA stated this was based on a back-of-the-envelope "needs assessment." Negotiations with this LFA are still ongoing.

### **C. The Need for Notice**

The City also seeks to express its grave concern regarding the accuracy of the factual record before the Commission in the present proceeding. In regard to the events discussed by the Errata, but for the City's monitoring this docket, the Commission's record would have remained flawed. The City further believes that such a result is symptomatic of permitting unattributed allegations to be made for the record without requiring commenting parties to provide notice to others referenced in filed comments.

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<sup>11</sup> See Letter from David Smith, City Attorney to Mr. Alan Ciamporcero, dated February 27, 2006, and Letter from Alan Ciamporcero to Mr. David Smith, dated March 8, 2006 attached hereto.

The Commission should never rely in its decision making process on vague or purely anecdotal statements that cannot be verified or corrected.<sup>12</sup> When a company alleges facts or conduct by a particular LFA, the Commission should strike those comments from the record if the company does not (1) specifically identify the LFA by name and (2) properly serve the LFA with any pleading in which the facts are alleged. The comments in the initial round of this docket are replete with other alleged misbehavior by other unnamed LFAs. The Commission has an obligation to verify these facts and to demand that commenters name the alleged miscreants and give those governments the opportunity to provide a rebuttal to the claims made against them.

**V. THE CITY WELCOMES COMPETITION AND CHOICE FOR ITS CONSTITUENTS**

Tampa enthusiastically expresses its desire for video competition. The City wants to reach an agreement with Verizon and any other qualified entity willing to offer our citizens video choice and the benefits of a competitive wireline environment. The City believes its efforts to first reach out to Verizon to clarify this matter, rather than use it as a justification to walk away from the bargaining table are testament to the City's desire to reach agreement with Verizon.

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<sup>12</sup> For that reason, in the NPRM the Commission requested that commenters provide specific examples of alleged LFA abuses. *See* NPRM, p. 8 (para.13).

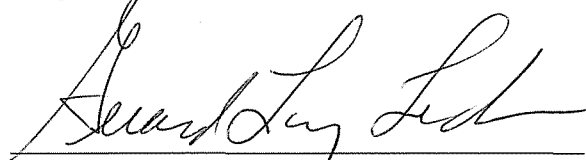
## **VI. THE COMMISSION LACKS AUTHORITY OVER LOCAL FRANCHISING**

The City agrees with various commenters<sup>13</sup> that Congress provided the Commission no authority over the local franchise process. Because these issues were fully briefed by other commenters, the City incorporates their comments by reference.

## **VII. CONCLUSION**

The City is grateful to Mr. Ciamporzero for clarifying the initial error in Verizon's opening round comments. The City asks the Commission to reject any reliance on the cited article from the WALL STREET JOURNAL. Lastly, the City commits to franchise promptly and efficiently any cable television franchise operator willing to address our community's needs and interests.

Respectfully submitted,



Nicholas P. Miller  
Gerard Lavery Lederer  
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(202) 785-0600

Counsel for the City of Tampa

March 28, 2006

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<sup>13</sup> See e.g. Comments of NATOA et. al filed February 13, 2006; Comments of Michigan Coalition filed February 13, 2006 at 3 and the Comments of the Maryland County Alliance filed February 13, 2006.

## **Appendix A**

### **Correspondence between City of Tamp and Verizon**

- **February 27, 2006 letter from City Attorney to Verizon**
- **March 8, 2006 letter from Verizon to City Attorney**





# CITY OF TAMPA

Pam Iorio, Mayor

Office of the City Attorney

David L. Smith  
City Attorney

February 27, 2006

Mr. Alan Ciamporcero, President  
Verizon, Southeast Region  
Mail Code FLTC0006  
Post Office Box 110  
Tampa, Florida 33602

Dear Alan,

It was a pleasure talking with you and Eric the other day. I appreciate your apology for the inclusion of inaccurate information regarding the City's position on PEG and INET in your recent FCC filing. As you know, at no time has the City indicated anything close to a \$13.5 million dollar demand for PEG and INET. In fact it is significantly less and given the payment deferral being considered may not even reach ten percent of that figure. Your statement that it was old, inaccurate information that was supposed to have been purged from the system was reassuring. Thank you for your promise to correct the data in your system in order to avoid a repeat occurrence.

You also indicated that you would correct the error in the FCC submittal with your next filing. When will that be? I ask the question because this error has become widely disseminated and caused some mischief. During a recent meeting with a member of the State of Florida House of Representatives, he said he had been told the very same thing. Although he indicated he had spoken with representatives of Verizon, he did not attribute that statement to anyone in particular.

As you may recall, it started with the inaccurate Wall Street Journal article, followed by the statement in your filing, which at least did not identify Tampa by name. It has been exacerbated, however, by a recent ATT filing specifically repeating the false information and naming Tampa as the "offending city". I am concerned about the damage to Tampa's good name in the business community at large. We are evaluating our options in that regard, but appreciate your volunteering to correct the problem to the extent Verizon has contributed to it.

Mr. Alan Ciamporzero  
February 27, 2006  
Page 2

Thank you again for your consideration. Hopefully your efforts will go a long way towards remedying the problem. I look forward to having our agreement done soon. That should, in itself, help restore the view that Tampa promotes a favorable business climate.

Very Truly Yours,  
/S  
David L. Smith  
City Attorney

cc Mayor Pam Iorio

K:\David Smith\Letters\Alan Ciamporzero -Verizon

Alan F. Ciamporcero  
President - Southeast Region

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MAR 15 2006

CITY OF TAMPA  
LEGAL DEPARTMENT



201 N. Franklin Street, FLTC0008  
Tampa, FL 33602

Phone 813 483-1285

March 8, 2006

David Smith  
City Attorney  
City of Tampa  
315 E. Kennedy Blvd., 5<sup>th</sup> Floor  
Tampa, Florida 33602

Dear David:

As we discussed, Eric and I asked our federal team to correct the record on the Tampa negotiations. They filed an errata pointing out that the \$13 million was not a demand for PEG and INET payments, but was, rather, a number from a "needs assessment" that negotiators gave us in the course of talks.

We're sorry for the previous inaccuracy, and we've talked to many people internally to ensure that the record is straight. I will also make a point of clearing it up with any state legislators that we deal with on the proposed legislation.

By the way, we turned on service in Hillsborough County this week and I was able to visit a couple of homes with FIOS TV yesterday. I think people are really going to be impressed. If you've got a few minutes this week or next, I'd be pleased to take you to one of these locations. I'll give you a call later in the week to see if this is a possibility.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Alan".

Alan F. Ciamporcero  
President - Southeast Region

AFC:clr  
Attachment

Leora Hochstein  
Executive Director  
Federal Regulatory



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Washington, DC 20005

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leora.l.hochstein@verizon.com

March 6, 2006

**ERRATA**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992.  
MB Docket No. 05-311

Dear Ms. Dortch:

This errata corrects the following in Verizon's February 13, 2006 comments in the above-referenced proceeding:

Page 65 of the Comments, replace the second sentence of the first full paragraph (paragraph 4 of section II.D.) with the following:

When Verizon rejected this demand and asked for an explanation, the LFA provided a summary "needs assessment" in excess of \$13 million for both PEG support and equipment for an expansion of its I-Net.

Attachment A, Declaration of Marilyn O'Connell, replace paragraph 30 with the following:

30. For example, one franchising authority in Florida demanded that Verizon match the incumbent cable operator's cumulative PEG payments, which would exceed \$6 million over the 15-year term of Verizon's proposed franchise. When Verizon rejected this demand and inquired as to its basis, the LFA stated it was Verizon's portion of a \$13 million "needs assessment" for both PEG and equipment for an expansion of its I-Net. The LFA stated this was based on a back-of-the-envelope "needs assessment." Negotiations with this LFA are still ongoing.

March 6, 2006

Page 2

A corrected copy of the filing is attached for the convenience of the Commission and parties.

Sincerely,

A handwritten signature in dark ink, appearing to read "Susan B. Anthony". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

Attachment